

**RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT**

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**DATE:** April 8, 2004

**TO:** Orange County Zoning Administrator

**FROM:** Resources and Development Management Dept/Current Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA04-0007 for Variance

**PROPOSAL:** The applicant requests approval of a Variance to a side yard setback to allow the construction a new single-family dwelling with an attached porte-cochere over an existing driveway to be located five (5) feet (with an eve overhang of two (2) feet) from the north side property line when a setback of ten (10) feet is required for this site. The site is currently developed with a 1,030 square feet single-family dwelling, which will be converted to a second residential dwelling upon completion of the new single-family dwelling per Orange County Zoning Code Section 7-9-145.6 and current State laws.

**LOCATION:** The project site is located in the North Tustin area, northeast of the intersection of Red Hill Avenue and Skyline Drive at 1412 Mardick Road, Santa Ana (see photo on page 2). Third Supervisorial District.

**APPLICANT:** Richard Huddleston, property owner

**STAFF** William V. Melton, Project Manager  
**CONTACT:** Phone: (714) 834-2541 FAX: (714) 667-8344

**SYNOPSIS:** Current Planning Services Division recommends the Zoning Administrator deny the proposal because the required Variance Finding cannot be made. If the Zoning Administrator determines the Variance Findings can be made, Findings and Conditions of Approval and are attached.

**BACKGROUND:**

The subject site is level, measuring 100 feet wide by 330 feet deep. The site is developed with a single-family dwelling with an attached two-car garage, built in 2002. The existing dwelling is located 25 feet from the rear property line and 230 feet from the front property line. The applicant proposes to construct a new one-story, 3,611 square feet single-family dwelling with a 4-car garage in front of the existing dwelling. The existing dwelling will become a second residential unit when the new dwelling is completed.

The current construction plans for the new dwelling calls for an attached porte-cochere over an existing driveway. The setback shown is 5 feet from the support posts to the side property line. Plans also show the roof eve line projecting an additional 2 feet into the setback area. Since this is an attached feature with

a height that exceeds 12 feet in height, it must be setback the same as the dwelling, which is 10 feet (calculated at 10 percent of the average lot width). To build the porte-cochere as proposed, a Variance is required. The balance of the new proposed single-family dwelling is in compliance with the 125-E4-20000 District setback regulations.

**SURROUNDING LAND USE:** (assumes Mardick Road runs north and south)

Direction	Zoning	Existing Land Use
Project Site	125-E4-20000 (Small Estates District with a minimum lot width of 125 feet and a minimum lot area of 20,000 square feet)	Single-family dwelling
North	125-E4-20000	Single-family dwelling
South	125-E4-20000	Single-family dwelling
East	125-E4-20000	Red Hill Elementary School
West	125-E4-20000	Single-family dwelling



**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to six County Divisions, the North Tustin Advisory Committee (NTAC) and the Foothill Community Association. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions. NTAC approved the proposal at a meeting held on March 17, 2004. The Foothill Community Association did not provide comments. Staff did receive a telephone call from the property owner adjacent to the north (where the variance is requested) expressing a concern for the proposal. The caller stated that there should be sufficient width of the site to construct the new home with attached porte-cochere without the need for a variance. A follow up letter was received on March 31, 2004 and is included in this report as Exhibit 2.

**CEQA COMPLIANCE:**

The proposed project is Categorical Exempt (Class 5, minor alterations in land use limitations such as setback variance) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

Regarding the porte-cochere, if this was a detached structure, Zoning Code Section 7-9-137 "Accessory Uses and Structures" would allow a structure up to 12 feet in height to be located 3 feet from the side property line. The maximum height for an accessory attached structure is 8 feet. If porte-cochere were a detached structure, the design would have to be modified because the roof of the structure within the setback area is 14 feet in height, and exceeds the permitted 12 feet height limit. Additionally, the porte-cochere as proposed has an eave that projects an additional 2 feet in the side yard setback area. However the structure as proposed is attached, exceeds the 8 feet high limit and the support posts must conform to the setback standards of the E4 District, which for this lot is a side yard setback of 10 feet. The applicant requests a structure height of 14 feet in the setback area with the roof supports setback 5 feet from the property line.

The design of the proposed porte-cochere reflects the architectural design of the front of the new dwelling. While the design of the attached structure proposed may be more appropriate than a detached structure, the proposal as submitted requires approval of a Variance. Before this variance request can be approved, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Zoning Administrator cannot make these two findings, the application must be disapproved.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.

2. Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Staff notes that the applicant has options available to bring the proposed porte-cochere in conformance with the E4 District and Zoning Code site development standards. One, the porte-cochere could be redesigned into a detached structure with a maximum height of 12 feet and setback three feet from the side property line. Two, since the project is all new construction, the covered porch on the side of the new dwelling could be redesigned with a reduction in size together with a reduction in the proposed driveway width of 13 feet to the minimum standard width of 12 feet. This change may allow the attached porte-cochere to be located out of the side yard setback area. Because the proposal involves all new construction and there are reasonable design alternatives to the applicant's proposal, staff was unable to identify the "special circumstances" that may apply to this proposal.

In the event that the Zoning Administrator determines that the two variance findings previously listed can be made, staff has included Appendix A – Findings; and, Appendix B – Conditions of Approval for the Zoning Administrator's consideration. The Zoning Administrator will need to ascertain the special circumstance for approving the variance requested for this proposal and complete Finding No.7 of Appendix A.

If this Variance proposal is approved, to bring the porte-cochere more into conformance with what could be a permitted use under the Zoning Code regulations for a detached structure, staff recommends that the Zoning Administrator consider the following Condition of Approval (COA No. 12 of Appendix B):

*Within thirty (30) days of the effective date of this permit, the applicant shall submit a revised site plan to the Assistant Director, RDMD for review and approval. Said revised site plan shall include the following revisions:*

*A. The eve overhang of the attached porte-cochere adjacent to the side property line shall not exceed six (6) inches or such an overhang that would leave a setback of four (4) feet - six (6) inches from the side property line.*

*B. The roof of the attached porte-cochere shall be revised so as to show that the height of the roof within the ten (10) foot side setback area does not exceed a maximum height of twelve (12) feet.*

The second part of this proposal is the conversion of the existing single-family dwelling on the site to a second residential unit once the new single-family dwelling is constructed. Until recently (before July 1, 2003), a second residential unit on a residential building site required approval of a Use Permit per Zoning Code Section 7-9-146.5. State laws under California Governing Code section 65852.2(b)(1) now permits second residential units outright, subject to certain site development standards. The existing dwelling on site current meets the setback requirements for the E4 District and County's site development standards for such units. So that the existing dwelling continues to conform to the second residential unit standards, staff recommends the following Condition of Approval (COA No. 13 of Appendix B) be incorporated into the project if this proposal is approved.

*Upon issuance of a use and occupancy permit for the main single-family dwelling, the existing dwelling on the site will become a second residential unit in accordance with Zoning Code Section 7-9-146.5 and State Assembly Bill AB1866. The second residential unit is approved subject to the following:*

*A. The unit is not intended for sale but may be rented.*

*B. The total area of floorspace of the unit does not exceed 1,200 square feet (the unit is presently 1,030 square feet).*

*C. One additional parking space, covered or uncovered, shall be maintained (the unit has two covered parking spaces).*

*D. The unit shall not encroach into any setback areas (the unit is presently setback 25 feet from the rear property line, 10 feet from the northerly property line and 28 feet from the southerly property line).*

#### **CONCLUSION:**

As noted, staff is not able to identify a special circumstance finding required for this proposal and is not able to support the applicant's Variance request. There are alternatives available to the applicant to construct the new dwelling without the need for a Variance. In the event the Zoning Administrator determines that there are special circumstances applicable to this Variance request, staff has included findings and conditions for consideration. Staff notes that whether or not the Variance request is approved or denied, the conversion of the existing residential to a second residential unit can proceed. The site development requirements for a second residential unit (similar to the ones listed above) will automatically be included with the conversion.

#### **RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Deny Planning Application PA04-0007 for Variance because the special variance finding can not be made;

or;

- c. Determine that the special variance finding can be made and approve Planning Application PA04-0007 for Variance subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief  
CPSD/Site Planning Section

WVM

Folder: My Documents/North Tustin/ PA04-0007 Staff 4-8 Huddleston

**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

- 1. Applicant's Letter of Explanation
- 2. Letter from Rick and Janell Smith, and Janet Wheeler dated March 29, 2004
- 3. Site Photos
- 4. Site Plans

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Resources and Development Management Department.